

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Daian Onaka, et al.,)	
)	Case No. 1:21-cv-10665-PAC
Plaintiffs,)	
)	Hon. Paul A. Crotty
v.)	
)	
Shiseido Americas Corporation,)	
)	
Defendant.)	
)	

DEFENDANT SHISEIDO AMERICAS CORPORATION'S
NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Shiseido Americas Corporation (“Shiseido”) respectfully gives notice of the following supplemental authorities in support of Shiseido’s Motion to Dismiss plaintiff’s First Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). Each of the three authorities referenced below became available after the Motions were fully briefed.

In the first attached authority, **Exhibit A**, *Dalewitz v. The Procter & Gamble Company*, 7:22-CV-07323 (S.D.N.Y.), this District granted with prejudice a motion to dismiss a false advertising case premised on a plaintiff’s organic fluorine testing and alleged PFAS in dental floss. The court held that the plaintiff’s organic fluorine testing is insufficient to state a plausible claim under New York false advertising laws, because such a test is only a “proxy” for PFAS and the plaintiff fails to allege the presence of “specific” PFAS. The exact same issues are present in this case and are raised in Shiseido’s pending motion to dismiss.

The second attached authority, **Exhibit B**, *GMO Free USA d/b/a Toxin Free USA v. The Procter & Gamble Company*, Case No. 2022, CA 4128B (Superior Court of the District of Columbia), also granted with prejudice a motion to dismiss a false advertising case premised on alleged undisclosed PFAS in dental floss. In dismissing the case, the court held that: (1) the plaintiff failed to identify any particular form of harmful PFAS in the product, and the presence of PTFE (a form of PFAS) could not support the claim because plaintiff did not plausibly plead a risk

associated with it; and (2) because plaintiff failed to plausibly plead that the product contained any harmful form of PFAS, claims related to safety and the environment were not misleading to a reasonable consumer. This authority is relevant because Plaintiffs here have also failed to plead that any particular forms of harmful PFAS are present in the makeup products or identify any actionable marketing claims.

In the third attached authority, **Exhibit C**, *Hicks, et al. v. L'Oréal U.S.A., Inc.*, this District granted a motion to dismiss a false advertising case alleging the presence of undisclosed PFAS in makeup products, including L'Oréal Paris and Maybelline mascara products. The *Hicks* plaintiffs argued that statements such as “ophthalmologist and allergy tested,” “[s]uitable for sensitive eyes,” and “[t]ested under dermatological control for safety” were false or misleading because, according to plaintiffs, the products contained PFAS based on the results of the Notre Dame study and the plaintiffs’ own third party testing of the relevant products. In dismissing the amended complaint, Judge Cronan held that the *Hicks* plaintiffs failed to allege standing because they “have not adequately pleaded that the mascaras they purchased contained PFAS nor that there was a material risk thereof,” finding that “[t] The Amended Complaint’s allegations boil down to describing general and unspecific results of testing, without meaningfully linking those results to Plaintiffs’ actual Purchased Products beyond Plaintiffs’ ‘information and belief.’” Plaintiffs in this case rely on the same general and unspecific testing allegations that cannot confer standing to pursue their claims.

Dated: October 10, 2023

Respectfully submitted,

/s/ Lori B. Leskin

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that the foregoing filing was served upon counsel of record via the Court's CM/ECF electronic filing system on October 10, 2023.

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